

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

GEORGE MOSES COLE,	)	
	)	
Petitioner,	)	
	)	
v.	)	CAUSE NO. 1:07-CV-204-TS
	)	
SUPERINTENDENT MIAMI	)	
CORRECTIONAL FACILITY,	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

George Moses Cole, a *pro se* prisoner, filed a motion to reconsider this Court's order of dismissal. He subsequently unsuccessfully appealed that order. Nevertheless, this motion is properly considered pursuant to Fed. R. Civ. P. 60(b).

This Court dismissed this habeas corpus petition finding that it was untimely filed. Pursuant to 28 U.S.C. § 2244(d)(1)(A), this Court found that the one-year period of limitation began to run on April 24, 1996, when the limitation provisions of the statute were enacted. Cole now argues that his claims are based on newly discovered evidence. In support of this argument, he attaches not only the newly discovered evidence, but also a letter from an attorney showing when he first obtained it. That letter is dated September 22, 2003. (DE 26 at 22.) If this is newly discovered evidence that could not have been discovered sooner through the exercise of due diligence, then, pursuant to 28 U.S.C. § 2244(d)(1)(B), the one-year period of limitation began to run no later than that date.

Though Cole sought to file a successive petition for post-conviction relief in the Court of Appeals of Indiana, he was denied on February 23, 2004. (*See* DE 1-2 at 1.) "Because an unauthorized successive petition is not considered 'properly filed' under Indiana law, the

one-year limit was not extended under § 2244(d)(2).” *Powell v. Davis*, 415 F.3d 722, 726–27 (7th Cir. 2005). Therefore, even if the information attached to the petition is considered to be newly discovered evidence that is the basis for his habeas petition, the one-year period of limitation expired on September 22, 2004. That makes this petition, signed on August 6, 2007, untimely by nearly three years.

For the foregoing reasons, the motion to reconsider is **DENIED**.

SO ORDERED on April 1, 2008.

s/ Theresa L. Springmann  
THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT